SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 339

THE KNOTT CORPORATION,
Petitioner,

vs.

MARY HALE FURMAN.

PETITION FOR REHEARING

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Comes now the above named, The Knott Corporation, a corporation, and presents this its petition for a rehearing of its application for a writ of certiorari which this court denied on October 27, 1947, and in support of this application for a rehearing, respectfully shows:

First: Petitioner believes that this Court, in denying the foregoing petition for a writ of certiorari, overlooked the fact that the decision of the majority of the Circuit Court of Appeals below held that doing business wholly and solely within the confines of the United States Military Reservation known as Fortress Monroe was doing business in the State of Virginia, and that doing business wholly and solely within said United States Military Reservation subjected petitioner to the jurisdiction of the laws of the State of Virginia. Notwithstanding that this ruling is directly

opposed to the decisions of the United States Supreme Court in the cases of:

Standard Oil Co. v. *California,* 291 U. S. 242 (1934);
United States v. *Unzenta,* 281 U. S. 138 (1930);
Arlington Hotel Co. v. *Fant,* — U. S. 278, 439 (1929);
Pacific Coast Dairy v. *Dept. of Agriculture of California,* — U. S. 318, 285 (1943);
Stewart & Co. v. *Sadrakula,* — U. S. 309, 84 (1940);
Collins v. *Yosemite Park Co.,* — U. S. 304, 518 (1938);
Murray v. *Gerrick,* — U. S. 291, 315 (1934),

and the fact that the majority of the Circuit Court of Appeals below had its attention directed to the decisions, *supra,* of the United States Supreme Court, the majority of the Court below failed to comment on or in any way to distinguish the facts in petitioner's case from those in the cases *supra.*

Second: The specific law of the State of Virginia which the majority of the Circuit Court of Appeals below held that petitioner was subject to by virtue of doing business on the United States Reservation is Section 3846 (a) of the Virginia Code of 1942. This statute, as indicated in the petition for a writ of certiorari, is designed to subject a foreign corporation to service by serving process on the Secretary of the Commonwealth of the State of Virginia as the statutory agent of the foreign corporation, and for that purpose only. It provides that a corporation which shall do business in the State of Virginia without having appointed the Secretary of the Commonwealth its true and lawful attorney as required by state statute, "* * * shall by doing such business in the State of Virginia be deemed

to have thereby appointed the Secretary of the Commonwealth its true and lawful attorney for the purposes hereinafter set forth." The purposes mentioned above are by the express provisions of the statute limited to "* * * the same legal force and validity as if served upon it in the State of Virginia."

We submit that this Court in denying the petition for a writ of certiorari has overlooked the fact that doing business wholly and solely on a Government Reservation was not a doing business in the State of Virginia, and that therefore, the Virginia statute, *supra,* could have no application to petitioner who had never in any way transacted any business in the State of Virginia, unless doing business on the United States Fortress Monroe Military Reservation can be deemed to be doing business in the State of Virginia.

We further submit that this Court has overlooked the fact that the Virginia statute, *supra,* only provides that the service of process on the Secretary of the Commonwealth as in the statute provided, is limited to the legal effect of the service of process in the State of Virginia. That statute provides for no waiver of venue whatsoever, and the majority of the Circuit Court of Appeals below failed to comment on, and apparently overlooked the significance of the legal effect of such service of process, and has definitely erred in ruling that service under the Virginia statute, *supra,* had the effect of a waiver of venue by petitioner.

For the foregoing reasons it is respectfully urged that this petition for a re-hearing be granted and the judgment of the District Court of the United States for the Eastern

District of Virginia be, upon further consideration, reversed.

Respectfully submitted,

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By JOHN W. OAST, JR.

Certificate of Counsel

I, John W. Oast, Jr., of counsel, do hereby certify that the foregoing petition for a re-hearing of this cause is presented in good faith and not for delay.

JOHN W. OAST, JR.,
Of Counsel for
The Knott Corporation.

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